



HCP(MD)No.791 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

HCP(MD)No.791 of 2023

Shenbaharaj

... Petitioner

vs.

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (xiv) Department,
Fort St.George, Chennai-600009.

2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tenkasi District, Tenkasi.

3. The Superintendent of Prison,
Palaymakottai Central Prison,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the Respondent No.2 in M.H.S.Confdl.No:30/2023 dated 21.04.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Shenbaharaj, son of Esakkimuthaliyar, aged about 27 years, now detained as "GOONDA" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.



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For Petitioner : Mr.S.Ramesh Kumar
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed by the detenu assailing the 'preventive detention order dated 21.04.2023 bearing reference No.M.H.S.Confdl No.30/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent and we find that Station House Officer of Puliyarai Police Station is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity] and the second respondent is the detaining authority as the impugned preventive detention order has been made by second respondent.

2. Captioned HCP was listed for admission on 05.07.2023 and Hon'ble predecessor Bench made the following order:

'H.C.P.No.791 of 2023
R.SURESH KUMAR, J.
and
K.K.RAMAKRISHNAN, J.



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Admit.

Mr.A.Thiruvadi Kumar learned Additional Public Prosecutor takes notice for the respondents. He seeks time to file counter affidavit.

Post after six weeks.'

3. Impugned detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

4. There is no adverse case. This solitary case which is the sole substratum of impugned preventive detention order is ground case qua the detenu for alleged offence under Section 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.27 of 2023 on the file of Puliyarai Police Station.



5. Mr.S.Ramesh Kumar, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, for all the respondents are before us.

6. In the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. Learned counsel submitted that such subjective satisfaction has been arrived at by the Detaining Authority by relying on an order dated 24.06.2021 in 'Kanipandi vs. State made in CrI.M.P.No.3711 of 2021 on the file of the Sessions Court, Tirunelveli Division' [hereinafter 'Kanipandi's case bail order' for the sake of convenience and clarity]. Relevant portion in paragraph No.5 of the grounds of detention reads as follows:

'6.... I am also aware that in a similar case bail has been granted to Kanipandi in CRMP No.3711/2021 on 24.06.2021 by the Sessions Court, Tirunelveli. I therefore infer that there is real possibility of Thiru.Shenbaharaj coming out on bail in Puliyarai Police Station Crime Number 27/2023; since bails are granted by the appropriate courts in such cases.'



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5. A careful perusal of Kanipandi's case bail order in the grounds booklet, more particularly, a paragraph thereat brings to light that the then prevailing Covid-19 situation had weighed in the mind of the learned Sessions Judge in granting bail. Relevant portion reads as follows:

'... Considering all the above aspects and also the present pandemic situation, this Court is inclined to grant bail to the petitioners herein. However, considering the pandemic and lock-down announced by the Government, it is decided that the petitioner/accused shall be released on bail on his own bond and subsequently within two months from the date of this order, he shall furnish regular sureties.'

6. Learned Prosecutor submitted to the contrary by saying that alleged offences in Kanipandi's case bail order and case on hand are broadly comparable.

7. We carefully considered the rival submissions.

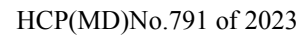


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8. Covid - 19 situation in legal parlance is from 15.03.2020 to 28.02.2022 vide orders of Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.3 of 2020 wherein limitation across the Board was extended and therefore, Kanipandi's case bail order would not apply to the case on hand as the impugned preventive detention order has been made on 21.04.2023. This Court has repeatedly held that in cases of this nature, comparison is not restricted to alleged offences but it pertains to determinants / parameters for grant of bail too as 'imminent possibility' is qua probability. Therefore subjective satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by relying on a bail order which in turn has granted bail owing to then prevalent Covid-19 situation, is impaired leading to the inevitable sequitur that impugned preventive detention order is vitiated and that it deserves to be dislodged.

9. Apropos, the further sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 21.04.2023 bearing reference M.H.S.Confdl.No.30/2023 made by the detaining authority is set aside and the detenu Thiru.Shenbaharaj, aged about 27 years, son of



(M.S., J.) (R.S.V., J.)
12.10.2023

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai.

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (xiv) Department,
Fort St.George, Chennai-600009.

2. The District Collector and District Magistrate,
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Tenkasi District, Tenkasi.

3. The Superintendent of Prison,
Palaymakottai Central Prison,
Tirunelveli District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

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ORDER MADE IN
HCP(MD)No.791 of 2023
DATED : 12.10.2023